

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

PEOPLE OF THE STATE OF
ILLINOIS,

Plaintiff-Intervenor,

Case No:

Judge:

v.

SMURFIT-STONE CONTAINER
ENTERPRISES, INC., d/b/a
SMURFIT-STONE FLEXIBLE
PACKAGING,

Defendant.

CONSENT DECREE

WHEREAS Plaintiff, the United States of America (the "United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA"), having filed a Complaint against Defendant Smurfit-Stone Container Enterprises, Inc., doing business as Smurfit-Stone Flexible Packaging ("Smurfit"), pursuant to section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), as amended ("the Act"), seeking civil penalties and injunctive relief for violations by Smurfit of applicable provisions of the federally-approved Illinois State Implementation Plan ("SIP"), including the Illinois Pollution Control Board ("IPCB") regulations codified at 35 Ill. Admin. Code Parts 205 and 218; applicable National Emissions Standards for Hazardous Air Pollutants ("NESHAP"), codified at 40 C.F.R. Part

63; Smurfit's duty to provide information to U.S. EPA upon request pursuant to Section 114 of the Act, 42 U.S.C. § 7414; and operating permit program requirements pursuant to Title V of the Act, 42 U.S.C. §§ 7661 *et seq.*

WHEREAS, Plaintiff-Intervenor, the People of the State of Illinois (the "State"), on behalf of the Illinois Environmental Protection Agency ("IEPA"), having agreed to the making of this Consent Decree.

WHEREAS, the United States, the State, and Smurfit agree that settlement of this matter without further litigation is in the public interest, and have entered into this Consent Decree in good faith to avoid expensive and protracted litigation and to settle the claims raised by the United States and the State.

WHEREAS, on June 30, 2006, the Facility was acquired by Bluegrass Flexible Packaging Company, LLC ("Bluegrass"), a Delaware limited liability corporation which is wholly owned by Altivity Packaging, LLC ("Altivity Packaging"), a Delaware limited liability corporation. Altivity Packaging is wholly owned by private equity funds managed by the Texas Pacific Group.

NOW, THEREFORE, before the taking of any testimony upon the pleadings, without adjudication of any issue of fact or law, except as provided in Section I, below, and solely for the purposes of resolving this case, and upon the consent and agreement of the parties to this Consent Decree, it is hereby ORDERED, and DECREED as follows:

I. JURISDICTION

1. This Court has jurisdiction over the United States, the State, Smurfit and the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355. Smurfit waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Smurfit shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

2. This Court has jurisdiction to hear this civil action brought by the State pursuant to Rule 24 of the Federal Rules of Civil Procedure.

3. This Court further has pendent jurisdiction over the subject matter and the parties hereto, pursuant to the Illinois Environmental Protection Act, 415 Ill. Comp. Stat. 5/1 *et seq.* (2004).

4. The State has the responsibility of enforcing its SIP that is mandated by the Act to achieve the National Ambient Air Quality Standards ("NAAQS") that are promulgated under the Act.

5. Venue properly lies in this district under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b) because the cause of action alleged herein occurred within this judicial district.

II. APPLICABILITY

6. The provisions of this Consent Decree shall apply to and be binding upon the parties to this action, and to Smurfit's successors and assigns as provided

for by Fed. R. Civ. P. 65(d). In any action to enforce this Consent Decree, Smurfit shall not raise as a defense the failure by any of its directors, officers, agents, officials, contractors, or employees to take any actions necessary to comply with the provisions of this Consent Decree.

7. Bluegrass agrees unconditionally to the jurisdiction of this Court and to be bound by the terms and obligations of this Consent Decree, jointly and severally with Smurfit, and shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree. Bluegrass shall be entitled to Smurfit's rights that are specifically provided in the Consent Decree to the extent they may be applicable to Bluegrass. Any obligation that is imposed upon Smurfit in this Consent Decree may be satisfied by Bluegrass and compliance with any such obligation by Bluegrass shall be deemed compliance by Smurfit. After (1) Paragraphs 11 and 13 of this Consent Decree have been complied with, and (2) the United States and the State determine that Bluegrass has the financial and technical ability to assume Smurfit's obligations under this Consent Decree, Smurfit shall be relieved of any further obligation set forth in the Consent Decree. The Defendant and Bluegrass shall provide to the United States and the State all information reasonably requested in order to make such determination.

8. Except as provided in Paragraph 7, above, no transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Smurfit or Bluegrass, or their successors and assigns, of their obligations to ensure that the terms of the Decree are

implemented, unless (1) the transferee agrees to undertake the obligations required by this Decree and to be substituted for the transferring party as a Party under the Decree and be thus bound by the terms thereof accomplished through a modification of this Consent Decree pursuant to Paragraph 39 herein, and (2) the United States and the State determine that, at the time of such transfer, the transferee has the financial and technical ability to assume the transferring party's obligations under this Consent Decree. At least 30 days prior to such transfer, the transferring party shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the language in the proposed written agreement relating to the transferee's assumption of the obligations under this Consent Decree, to EPA Region 5, the United States Department of Justice, and the State in accordance with Section X (Notices) of this Decree. Any attempt to transfer ownership or operation of the Facility without giving written notice to U.S. EPA, the Department of Justice, and the State as required by this Paragraph constitutes a violation of this Decree.

III. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the Act, or in regulations promulgated thereunder, shall have the meanings assigned to them in such definitions. In addition, the following definitions shall apply to the terms used in this Consent Decree:

“Bluegrass” means Bluegrass Flexible Packaging Company, LLC and its successors and assigns.

“CAA” or the “Act” means the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*

“Consent Decree” means this Consent Decree and modification(s) made to this Consent Decree pursuant to Paragraph 39 of this Consent Decree.

“Day” means a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday the period shall run until the close of business of the next day that is not a Saturday, Sunday, or federal holiday.

“ERMS Rules” mean those regulations promulgated by the State of Illinois at 35 Ill. Admin. Code Part 205, and approved by U.S. EPA as part of the Illinois SIP on October 15, 2001 (66 Fed. Reg. 52343-59), codified at 40 C.F.R. § 52.701(c)(158).

“Facility” means the property, buildings and equipment located at 1228 East Tower Road, Schaumburg, Illinois.

“IEPA” means the Illinois Environmental Protection Agency and any successor department or agencies of the State of Illinois.

“IPCB” means the Illinois Pollution Control Board.

“Illinois SIP” or “SIP” means the Illinois State Implementation Plan approved by EPA pursuant to Section 110(a) of the CAA, 42 U.S.C. § 7410(a).

“Ill. Admin. Code” means the Illinois Administrative Code.

“Paragraph” means a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

“Parties” mean the United States, the State of Illinois, and Smurfit.

“Plaintiff” means the United States.

“RTO” means a regenerative thermal oxidizer which is designed to destroy volatile organic material by means of high temperature thermal oxidation.

“Section” means a portion of this Consent Decree identified by a Roman numeral.

“Smurfit” or “Defendant” means Smurfit-Stone Container Enterprises, Inc., and its successors or assigns.

“State” means the State of Illinois and all of its departments and agencies.

“Title V Permit” means the permit required of Smurfit’s major sources under Title V of the Clean Air Act, 42 U.S.C. §§ 7661-7661e.

“United States” means the United States of America and all of its departments and agencies.

“U.S. EPA” means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“VOM Rules” means those portions of the Illinois SIP addressing volatile organic material emissions standards for the Chicago Area promulgated by the State of Illinois at 35 Ill. Admin. Code Part 205, and approved by U.S. EPA as part of the Illinois SIP on September 9, 1994 (59 Fed. Reg. 46562-69), codified at

40 C.F.R. § 52.720(c)(101). The VOM Rules that are applicable to this Consent Decree are in 35 Ill. Admin. Code, Part 218, Subpart H.

IV. COMPLIANCE

10. In order to achieve compliance with the VOM Rules applicable to its flexographic and rotogravure printing lines, Smurfit has installed a new RTO at the Facility's flexographic and rotogravure printing lines. Smurfit has performed capture and destruction efficiency testing for the new RTO, and has submitted the test results to U.S. EPA and IEPA for their review. These tests have demonstrated that, at the time of the testing, Smurfit was in compliance with the emission reduction requirements of 35 Ill. Admin. Code § 218.401(c)(2) and the capture system and control requirements of 35 Ill. Admin. Code § 218.401(c)(4) at its flexographic printing line no. 410 and its rotogravure line nos. 100, 110, 200 and 210.

11. Smurfit shall achieve compliance with the ERMS Rules as follows: Within thirty days after entry of this Consent Decree, Smurfit shall pay the Alternative Compliance Market Account ("ACMA") bill issued on November 10, 2005 by the IEPA in the amount of \$151,440.36.

12. Beginning no later than the day following entry of this Consent Decree, Smurfit shall maintain compliance with the emission reduction requirements of 35 Ill. Admin. Code § 218.401(c)(2) and the capture system and control requirements of 35 Ill. Admin. Code § 218.401(c)(4), at its flexographic

printing line no. 410 and its rotogravure line nos. 100, 110, 200 and 210 as applicable.

V. CIVIL PENALTY

13. Within thirty days of the Court's entry of this Consent Decree, Smurfit shall pay a civil penalty of \$162,500 to the United States, and \$162,500 to the State of Illinois.

14. With respect to the payment to the United States, Smurfit shall make its payment by Fed Wire Electronic Funds Transfer ("EFT") to the United States Department of Justice Lockbox Bank in accordance with current EFT procedures and shall reference the above-captioned case name, the civil action number assigned to this case by the United States District Court, Northern District of Illinois, DOJ Case No. 90-5-2-1-08141, and the U.S.A.O. File Number 2006 V01105. Defendant shall advise the Financial Litigation Unit of the Office of the United States Attorney for the Northern District of Illinois at the time payment is being wire transferred. In case the Financial Litigation Unit does not provide payment instructions within fifteen days following entry of the Consent Decree, Smurfit's deadline for payment of the civil penalty shall be extended until fifteen days following Smurfit's receipt of said payment instructions. Any payments received by the Department of Justice after 3:00 p.m. Eastern Time shall be credited on the next business day. Defendant shall also send notice to U.S. EPA, the Department of Justice, and the State of Illinois at the addresses set forth below that payment has been made. A copy of the certified check, money order or record

of electronic funds transfer and any transmittal letter shall be provided with such notice to:

Attn: Compliance Tracker, AE-17J
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Louise C. Gross
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd., C-14J
Chicago, IL 60604-3590

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20530
Ref. DJ# 90-5-2-1-08141

Matthew Marinelli
Assistant Attorney General
Environmental Bureau
Office of the Illinois Attorney General
188 West Randolph Street, 20th Floor
Chicago, IL 60601

15. With respect to the payment of the civil penalty to the State as provided in Paragraph 13:

a. Within 30 days of lodging of this Consent Decree, the Defendant will tender the payment to Defendant's attorney of record in this matter in a form acceptable to that attorney directing such attorney to make the penalty

payment on behalf of Defendant within thirty days of notice of entry of this Consent Order, in a manner prescribed below.

b. Payment shall be made by certified check or money order, payable to IEPA for deposit into the Environmental Protection Trust Fund ("EPTF") and shall be sent by first class mail, and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

c. The name, case number and the Defendant's Federal Employer Identification Number ("FEIN") shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Matthew Marinelli
Assistant Attorney General
Environmental Bureau
Office of the Illinois Attorney General
188 West Randolph Street, 20th Floor
Chicago, IL 60601

and

Maureen Wozniak
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, IL 62784-9276

16. Civil penalty payments under this Consent Decree shall not be deductible for purposes of federal or State taxes.

17. If Smurfit fails to make any payment required under this Section of the Consent Decree, a late payment charge of 9% per annum on the overdue and unpaid balance of said amount shall accrue beginning on the due date for said payment until all overdue amounts have been paid. Payment of any late charges to the United States and the State of Illinois shall be paid at the time the overdue and unpaid balance of the civil penalty is paid and in the same manner as set forth in Paragraphs 14 and 15b. and c., above. Smurfit shall notify the Financial Litigation Unit of the office of the United States Attorney for the Northern District of Illinois of its calculation of the late payment charges.

VI. FUTURE USE

18. This Consent Decree may be used in any future enforcement action or permit proceeding under the Illinois Environmental Protection Act against Smurfit as evidence of past adjudication of violations of the Illinois Environmental Protection Act and IPCB regulations for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or Section 42(h) of the Illinois Environmental Protection Act, 415 ILCS 5/39(a) and (i) and/or 5/42(h)(2000). Nothing herein shall prohibit the use of this Consent Decree as evidence of a past adjudication of a violation of the Clean Air Act against Smurfit.

VII. ACCESS

19. Representatives of U.S. EPA and/or IEPA or their designees may enter the Facility at reasonable times, upon presentation of appropriate credentials, and perform inspections or copy records for the purpose of determining

compliance with this Consent Decree. This right of access is in addition to, and shall not limit, any right of entry and inspection held by U.S. EPA or IEPA pursuant to applicable federal or State laws, regulations or permits. In conducting such inspections, representatives of U.S. EPA and/or IEPA and their designees may take photographs and samples and may collect information, as they deem necessary, provided, however, any information claimed as confidential by Smurfit shall be maintained as confidential by the U.S. EPA and IEPA to the extent required by applicable law.

VIII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

20. Subject to Paragraph 27, for any failure by Smurfit to comply with the terms of this Consent Decree, Smurfit shall pay the following stipulated penalties per each day of each violation:

a. Failure to comply with the ERMS Rules, as specified in Paragraph 11 of this Consent Decree -- \$200 for the first thirty days, \$500 for each day thereafter.

b. Failure to maintain compliance with Section 218.401(c)(2) and 218.401(c)(4) of the Illinois SIP as specified in Paragraph 12 of this Consent Decree -- \$500 for the first thirty days, \$1,000 for the second thirty days, and \$1,500 for each day thereafter.

c. Failure to pay the civil penalty within thirty days as specified in Paragraph 13 -- \$1,000.

21. Subject to Paragraph 27, stipulated penalties are due and payable within thirty days of the date that the United States or the State makes a written demand for payment of stipulated penalties. A demand from either the United States or the State will be deemed a demand from both; but, the United States and the State will consult with each other prior to making a demand. If the United States and/or the State seek stipulated penalties for a violation of this Consent Decree, they reserve the right to pursue any other non-monetary remedies to which they are entitled for the same violation(s), including, but not limited to, additional injunctive relief for Smurfit's violations of this Consent Decree. Any stipulated penalty shall be apportioned between the United States and the State, one-half to each. Any demand for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates, the dates of violation, the stipulated penalty amount the government is demanding for each violation, the calculation method underlying the demand, and the grounds upon which the demand is based. The United States and/or the State may each, in its unreviewable discretion, waive all or any portion of its portion of the stipulated penalties due to it under this Consent Decree. Payment of stipulated penalties by Smurfit shall not in and of itself constitute an admission of any violation of law or this Consent Decree. Interest shall accrue at a rate of 9% per annum on any stipulated penalty that is not paid in full within thirty days of the date of the demand for such stipulated penalty and shall be paid at the time the stipulated penalties are paid.

22. All stipulated penalty payments to the United States shall be made in the same manner as set forth in Paragraph 14 of this Consent Decree. All payments shall indicate that the payment is for stipulated penalties, and shall include a statement as to how interest, if any, was calculated.

23. All stipulated penalty payments to the State shall be made in the same manner as provided in Paragraph 15(b) and (c) of this Consent Decree.

24. Subject to Paragraph 21 of this Consent Decree, nothing in this Consent Decree shall be construed as prohibiting, altering or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of any violation of this Consent Decree or provision of law by Defendant.

IX. DISPUTE RESOLUTION

25. Unless otherwise expressly provided for in this Consent Decree, the procedures set forth in this Section shall be the exclusive mechanism to resolve all disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations of Defendant that have not been disputed in accordance with this Section.

26. Informal Negotiations. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed thirty days from the time the dispute arises, unless it

is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party to the dispute sends the other parties to this Consent Decree a written Notice of Dispute. Such Notice shall describe the issue in dispute, the outcome that party believes is appropriate, and the basis for that party's position, and shall be submitted in the manner prescribed by Section X, below, of this Consent Decree.

27. Formal Dispute Resolution.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then, if U.S. EPA is a party to the dispute, the position advanced by U.S. EPA shall be considered binding on the parties to the dispute, or if U.S. EPA is not a party to the dispute, the position advanced by IEPA shall be considered binding upon the parties to the dispute unless, within twenty days after the conclusion of the informal negotiation period, Smurfit invokes the formal dispute resolution procedures of this Section by serving on the other parties to this Consent Decree a written Statement of Position on the matter in dispute, including but not limited to any factual data, analysis, evidence or opinion supporting that position, and any supporting documentation relied upon by Smurfit.

b. U.S. EPA or IEPA, whichever is applicable, shall compile and maintain an administrative record for any formal dispute. The administrative record shall include the Statement of Position submitted by Smurfit pursuant to the preceding subparagraph (including all evidence and other materials submitted with

such Statement of Position), and materials relied upon by U.S. EPA, or IEPA, in deciding the dispute pursuant to the following subparagraph.

c. If U.S. EPA or the IEPA, whichever is applicable, concurs with Smurfit's position, U.S. EPA or IEPA shall so notify Smurfit in writing. If U.S. EPA or IEPA does not concur with Smurfit's position, U.S. EPA or IEPA shall so notify Smurfit in a written determination which summarizes the basis for U.S. EPA's or IEPA's decision. U.S. EPA's or IEPA's decision shall be considered binding on the Parties unless, within thirty days after Smurfit's receipt of said written determination, Smurfit files a notice of judicial appeal to this Court setting forth a description of the matter in dispute, and the efforts made by the parties to resolve it. The United States or the State of Illinois may file a response to the notice of judicial appeal.

d. In any judicial appeal of a U.S. EPA or IEPA dispute resolution determination, Smurfit shall bear the burden of demonstrating that it is entitled to all or part of the requested relief according to principles of applicable law, based on the administrative record compiled and maintained by U.S. EPA or IEPA, in accordance with subparagraph 27.b., above.

28. Stayed Payment of Stipulated Penalties Pending Resolution of Dispute. The invocation of formal dispute resolution procedures under this Section shall not extend or postpone any obligation of Smurfit under this Consent Decree, but Smurfit's obligations to pay stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding

the stay of payment, stipulated penalties shall continue to accrue during proceedings to resolve disputes under this Consent Decree until the following:

a. If the dispute is resolved by informal negotiations or by a decision of U.S. EPA or IEPA that is not appealed to the District Court, accrued penalties determined to be owing shall be paid to the United States or State of Illinois within twenty days of Smurfit's receipt of a written demand for payment by U.S. EPA or IEPA following the informal resolution or the receipt of EPA's decision.

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing within sixty days of receiving the Court's decision or order, except as provided in subparagraph 28.c., below.

c. If any party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within thirty days of receiving the final appellate court decision.

X. NOTICES AND SUBMISSIONS

29. Whenever, under the terms of this Consent Decree, written notice is required to be given, or a plan, report or other submission is required to be sent by one party to another, it shall be directed to the individuals at the address specified below, unless those individuals or their successors give notice of a change to the other party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall

constitute complete satisfaction of any written notice requirement of the Consent

Decree:

As to the United States:

For the Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
RE: DJ# 90-5-2-1-08141

For non-USPS courier service
601 D Street, N.W., Room 2121
Washington, D.C. 20004
RE: DJ# 90-5-2-1-08141

For U.S. EPA:

Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

and

Chief, Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

As to the State of Illinois:

For the Office of the Illinois Attorney General

Matthew Marinelli
Assistant Attorney General
Environmental Bureau

Office of the Illinois Attorney General
188 West Randolph Street, 20th Floor
Chicago, IL 60691

For IEPA

Manager
Compliance and Enforcement
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62814-9276

Maureen Wozniak
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62814-9276

As to Smurfit:

Roy Cobb
Smurfit-Stone Container Enterprises, Inc.
8182 Maryland Avenue
St. Louis, MO 63105

Henry J. Handzel, Jr.
DeWitt Ross & Stevens S.C.
2 East Mifflin Street, Ste. 600
Madison, WI 53703

As to Bluegrass:

Ken Kushibab
Vice President and Treasurer
Bluegrass Flexible Packaging Company, LLC
450 E. North Avenue
Carol Stream, IL 60188-2190

Clive Bode
General Counsel

Texas Pacific Group
301 Commerce Street, Suite 3300
Forth Worth, TX 76102

Nelson D. Johnson
Arnold & Porter
399 Park Avenue
New York, NY 10022

30. Defendant's Certification of Notices and Submissions. All notices and submissions required by this Consent Decree to be submitted by Smurfit shall be certified by a responsible corporate official, and accompanied by the following certification:

I certify that to the best of knowledge and belief after appropriate inquiry the information contained in or accompanying this submission is true, accurate, and complete. This certification is based on my personal preparation, review, or analysis of the submission, and/or supervision of persons who, acting on my direct instructions, made the verification that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and/or imprisonment for knowing violation.

31. U.S. EPA's Review of Submissions. Following receipt of any plan, report, or other submission by Smurfit under this Consent Decree, U.S. EPA may (but need not) do one of the following, in writing: (i) accept the submission; or (ii) reject the submission, notifying Defendant of deficiencies in the submission and granting Defendant an additional thirty days from receipt of the rejection within which to correct the deficiencies. Disputes between U.S. EPA and Defendant concerning U.S. EPA's review of submissions shall be resolved in accordance with Section IX (Dispute Resolution), above, of this Consent Decree.

XI. GENERAL PROVISIONS

32. This Decree resolves the civil claims of the United States and the State of Illinois against the Defendant for the violations alleged in the Complaint filed in this action, the third-party intervention Complaint filed by the State of Illinois, the November 22, 2002 Notice of Violation, and the June 3, 2003 Notice of Violation and Finding of Violation issued by U.S. EPA, the May 19, 2003 Violation Notice issued by the IEPA, and the September 22, 2003 Notice of Intent to Pursue Legal Action issued by the IEPA, but shall not be construed as resolving claims for any violation that may occur after the date of lodging of this Decree. This Decree also resolves any civil claims the United States and the State of Illinois may have against the officers, directors, and employees of the Defendant for the violations alleged in the documents referred to in the previous sentence, but only to the extent said officers, directors, and employees were acting in their official capacity as officers, directors, and employees, and only as to the actions of the Defendant as described in said allegations.

33. This Consent Decree does not affect Smurfit's responsibility to comply with all other federal, State, or local laws or regulations or any order of the Court including, but not limited to, an order pursuant to Section 303 of the Act, 42 U.S.C. § 7603.

34. This Consent Decree does not limit or affect the rights of Smurfit, the State or the United States as against any third parties.

35. Each party to this action shall bear its own costs and attorneys' fees.

36. This Consent Decree is not and shall not be interpreted to be a permit or a modification of an existing permit issued pursuant to the CAA or under State law, and shall not be construed to waive or relieve Smurfit of any obligation to apply for, obtain and comply with any applicable permit under the CAA.

37. The Court shall retain jurisdiction of this case until termination of this Consent Decree in order to enforce the Consent Decree.

38. This Consent Decree in no way limits or affects any right of entry and inspection held by the United States pursuant to applicable federal or state laws, regulations, or permits.

39. There shall be no modification of this Consent Decree without written agreement by all three Parties which must be filed with the Court. Material modifications of this Consent Decree may be made only with the approval of the Court.

XII. FORCE MAJEURE

40. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes using best efforts to anticipate any potential Force Majeure event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay is minimized to the greatest extent

practicable. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

41. Examples of events that are not Force Majeure include, but are not limited to, unanticipated or increased costs or expenses of work, financial difficulties encountered by Defendant in performing such work, and the failure of Defendant or their representatives including contractors to make complete and timely application for any required approval or permit.

42. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, as to which Defendant intends to assert a claim of Force Majeure, Defendant must provide notice in writing, as provided in Section X ("Notices and Submissions") of this Consent Decree, within twenty days of the time Defendant first knew of, or by the exercise of due diligence should have known of, the event. Notification must include an explanation and description of the reasons for the delay; the anticipated duration of the delay; a description of all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and Defendant's rationale for attributing the delay to a Force Majeure event. Failure to comply with these requirements will preclude Defendant from asserting any claim for Force Majeure.

43. Defendant has the burden of proving, by a preponderance of the evidence, that an event was a Force Majeure event; that Defendant gave the notice required by the preceding Paragraph; that Defendant took all reasonable steps to

prevent or minimize any delay caused by the event; and that any period of delay Defendant claims was attributable to the Force Majeure event was caused by that event.

44. U.S. EPA, after consultation with IEPA, will notify Defendant in writing of its agreement or disagreement with Defendant's claim of Force Majeure within thirty days of receipt of the notice provided under Paragraph 42. If U.S. EPA agrees that Defendant could not have prevented or mitigated any delay, or anticipated delay attributable to a Force Majeure event by the exercise of due diligence, U.S. EPA will notify Defendant in writing of its agreement to an extension of time for Defendant's performance of the affected compliance requirement by a period not exceeding the delay actually caused by the event. In the event the Parties cannot agree, U.S. EPA's determination will govern unless Defendant invokes formal Dispute Resolution pursuant to Paragraph 27 of Section IX of this Consent Decree within fourteen days after Defendant's receipt of U.S. EPA's notification. An extension of time for performance of one or more obligations affected by a Force Majeure event will not, of itself, extend the time for performance of any other obligation.

45. Stipulated Penalties will not be due for the number of days of noncompliance determined to be caused by a Force Majeure event as defined in this Section.

XIII. PUBLIC COMMENT

46. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree are subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Smurfit shall not oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified Smurfit in writing that the United States no longer supports entry of the Consent Decree.

XIV. TERMINATION

47. After Defendant has maintained continuous satisfactory compliance with the requirements of this Consent Decree for a period of twelve months after the date of entry of this Consent Decree and has paid the civil penalty and any accrued Stipulated Penalties as required by this Consent Decree, Defendant may serve upon the United States and the State a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation. Such documentation shall include, but not be limited to, all strip charts containing operating temperatures for the RTO from the date of entry of this Consent Decree to the date of Defendant's Request for Termination.

48. Following receipt by the United States and the State of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the State, agrees that the Defendant has maintained continuous satisfactory compliance with the requirements of the Consent Decree for the twelve months immediately preceding the Request for Termination, the Parties shall submit, for the Court's approval, a joint stipulation requesting the termination of the Decree.

49. If the United States, after consultation with the State, does not agree that the Defendant has maintained continuous satisfactory compliance with the requirements of this Consent Decree for the twelve months immediately preceding the Request for Termination and that this Consent Decree may be terminated, or does not otherwise act upon Defendant's request, Defendant may invoke Dispute Resolution under Section IX of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 27 of Section IX, until sixty days after service of its Request for Termination.

50. The provisions of Paragraph 18 pertaining to future use, and Paragraph 32 pertaining to resolution of claims shall survive and shall not be subject to and are not affected by the termination of any other provision(s) of this Consent Decree.

XV. SIGNATORIES

51. Each undersigned representative of Defendant, Bluegrass, the Deputy Section Chief, Environmental Enforcement Section of the Department of Justice, the Acting Regional Administrator of Region 5 of the USEPA, the People of the State of Illinois *ex rel.* Lisa Madigan, and the IEPA certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such party to this Decree.

52. Defendant consents to the entry of this Consent Decree as lodged with the Court without further notice. Defendant further agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree.

SO ENTERED THIS _____ DAY OF _____, 2006.

UNITED STATES DISTRICT JUDGE
Northern District of Illinois

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and State of Illinois v. Smurfit-Stone Container Enterprises, Inc.* (N.D. Ill.), relating to Smurfit's Facility at 1228 East Tower Road, Schaumburg, IL:

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Date _____
W. BENJAMIN FISHEROW
Deputy Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

Date _____
STEVEN D. ELLIS
Trial Attorney, Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

UNITED STATES ATTORNEY

PATRICK J. FITZGERALD
United States Attorney

Date _____
By: Kurt Lindland
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604
Telephone: (312) 353-1996

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and State of Illinois v. Smurfit-Stone Container Enterprises, Inc.* (N.D. Ill.), relating to Smurfit's Facility at 1228 East Tower Road, Schaumburg, IL:

FOR PLAINTIFF THE UNITED STATES OF AMERICA (Continued):

By: _____
BHARAT MATHUR
Acting Regional Administrator
United States Environmental
Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Date: _____

By: _____
LOUISE C. GROSS
Associate Regional Counsel
United States Environmental
Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Date: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and State of Illinois v. Smurfit-Stone Container Enterprises, Inc.* (N.D. Ill.), relating to Smurfit's Facility at 1228 East Tower Road, Schaumburg, IL:

FOR PLAINTIFF STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: _____ Date: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: _____
ROBERT A. MESSINA
General Counsel

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and State of Illinois v. Smurfit-Stone Container Enterprises, Inc.* (N.D. Ill.), relating to Smurfit's Facility at 1228 East Tower Road, Schaumburg, IL:

FOR DEFENDANT SMURFIT-STONE CONTAINER ENTERPRISES, INC.

Nina-Mary Butler
Vice President, Environmental Affairs
Smurfit-Stone Container Enterprises,
Inc.
1979 Lakeside Parkway
Tucker, GA 30084

If different from above, the following is the name and address of the Settling Defendant's agent for service of process, and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

N.A., Same as above

Henry J. Handzel, Jr.
DeWitt, Ross & Stevens, S.C.
2 East Mifflin St., Suite 600
Madison, WI 53703

THE UNDERSIGNED, as provided in Paragraph 7 hereof, agrees to the terms of this Consent Decree in the matter of *United States and State of Illinois v. Smurfit-Stone Container Enterprises, Inc.* (N.D. Ill.), relating to the Facility at 1228 East Tower Road, Schaumburg, IL:

FOR BLUEGRASS FLEXIBLE PACKAGING COMPANY, LLC

(name and title of signing official)

If different from above, the following is the name and address of the signing parties' agent for service of process, and the name and address of signing parties' counsel. Counsel may act as agent for service.

Agent for Service

Attorney

Name

Name

Address

Address

Telephone